(1)

04-641 JUL 2 - 2004

In The

Supreme Court of the United States

Tod N. Rockefeller
Petitioner,
v.
William H. Rehnquist
in his Official Capacity as
Chief Justice of the United States
Judicial Branch; Tenth Circuit
Judges Briscoe, Henry, Murphy;
Judge Parker of the USDC-NM;
in their Official Capacities,
Respondents.

On Appeal to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR WRIT OF CERTIORARI

Tod N. Rockefeller, pro se
319 Sunnyview St.
Carlsbad, NM 88220
(505) 628 - 3541

END

Questions Presented

1. Whether this Court will resolve several conflicts between the DC Circuit itself; and DC Circuit Panel conflicts with eight (8) other Circuit Courts and this Court ?

2. Whether this Court will take corrective supervisory action towards the judicial misconduct of eight (8) federal judges ?

3. Whether this Court will consider that a well-founded request for injunctive relief should be granted ?

Parties Proceeding

Petitioner was plaintiff (03-1538 RBW; dismissed sua sponte) in the DC District Court, and subsequently Appellant to the DC Cir. (03-5282).

Respondents are Chief Justice Rehnquist; Tenth Circuit Judges Briscoe, Henry, Murphy; and Judge Parker of the USDC District of New Mexico. Contacts: 10th Cir. U.S. Courthouse, 1823 Stout St. Denver, CO 80257; (303) 844-3157. USDC-NM 333 Lomas, NW Albuq., NM 87102; (505) 348-2000.

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CASES

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Davis v. Passman, 442 U.S. 228, 234, 242 (1979);
Eldred v. Ashcroft, 99-5430 (DC Cir. July13, 2001);
Forrester v. White, 484 U.S. 219, 228-29 (1988);
Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979);
Heimbach v. Lyons, 597 F.2d 344 (2nd Cir.1979);
In re Justices of Supreme Court of Puerto Rico, 696 F.2d 17 (1st Cir. 1982);
King v. Hillcrest Health Cntr., Inc., No. 00-6158, Sec. III.A (10th Cir. Sept. 7, 2001);
Kowal v. MCI Comm. Corp., 16 F.3d 1271, 1278 (DC Cir. 1994);
Pelican Prod. Corp. v. Marino, et al., 893 F.2d 1143, 1146 (10th Cir.1990);
Pulliam v. Allen, 466 U.S. 522, 528, 537, (1984);
Richardson v. Koshiba, 693 F.2d 911 (9th Cir. 1982);
Rose v. Hartford UW Insur. Co., No. 98-4286, Fed. App. 0053P, Sec. III (6th Cir. 2000);
Slavin v. Curry, 574 F.2d 1256 (5th Cir. 1978);
Taylor v. Resolution Trust Corp., et al., No. 95-5001, Sec. II.B (DC Cir., June 23, 1995);
U.S. ex rel. Totten v. Bombardier Corp., et al., 286 F.3d 542, 546, 552 (DC Cir. 2002);
WXYZ, Inc. v. Hand, 658 F.2d 420 (6th Cir. *1981).*

Rules

Supreme Court ("Sup.Ct.") Rules 10(a), 10(c), 14.1

Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1). The DC Cir. denied Petitioner's Petition for Rehearing En Banc (03-7120) with an Order filed on APR 9, 2004.

Constitutional Provisions at Issue

First Amendment Right of Free Speech
Fifth Amendment Right of Due Process of Law
Seventh Amendment Right of Trial by Jury

Statement of the Case

This case stems from post-employment retaliations, including blacklisting, taken upon Petitioner by his former employer, the U.S. Dept. of Energy ("DOE"). Petitioner filed a complaint in the USDC District of New Mexico [01-0399 JP]. Said Complaint was dismissed with Due Process violations including exclusion of relevant employment records evidence filed, and denial of "relevant" discovery ruled by the Magistrate. See A-19, A-20 below. The 10th Cir. affirmed [02-2117] the district court's dismissal of the case while ignoring the pleadings of Petitioner. Subsequently, a timely Petition for Writ of Certiorari was filed with this Court, No. 02-1621. Petitioner had listed the 10th Cir. judges as Respondents within Petition 02-1621, and properly served said judges with the Petition.

The 10th Cir. Respondents had remained silent towards Petitioner's allegations of Due Process violations and other injuries suffered by Petitioner, that were detailed within Petition 02-1621. Next, Petitioner filed, on July 16th, 2003, a Complaint in the USDC-DC [03-1538] due to his injuries from the judicial misconduct above. The USDC-DC dismissed 03-1538 sua sponte, on July 30th, 2003, due to pleading flaws within the Original Complaint. Petitioner filed, on August 28th, 2003, an Amended Complaint along with a Motion for Relief from Judgment (henceforth "MfRfJ"). Petitioner's MfRfJ

explained that the Amended Complaint was filed in accordance with the requirements of Fed.R.Civ.P. Rule 15(a). The USDC-DC denied the MfRfJ, along with dismissing the Amended Complaint, with citing the pleading flaws from the Original Complaint that were NOT within the Amended Complaint. This is a very obvious error of law and abuse of discretion. Petitioner filed an appeal [03-5282] with the DC Cir.. The DC Cir. dismissed 03-5282 citing, as the USDC-DC had, said pleading flaws while ignoring the pleadings of Petitioner. A timely Petition for Rehearing En Banc was filed with the DC Cir., which was denied on April 9th, 2004. See App. 6 below. Petitioner has suffered from the very clear judicial misconduct of eight (8) federal judges above that will be further elaborated below.

Argument

Question 1.

The Federal Rules of Appellate Procedure ("FRAP ") have been designed to provide for uniform and fair proceedings within the U.S. Circuit Courts of Appeals. For example, FRAP 35(a) requires that an En Banc Determination "will not be ordered unless:"

> "(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."

In compliance with the design of Rule 35, in providing uniformity, the circuit courts require that prior panel decisions of the court will be followed. Unless, there is a hearing en banc of all of the circuit's judges for a new determination on the issue. See Cupples Farms, 951 F.2d at 886 (8th Cir.); King, No. 00-6158 at Sec. III.A (10th Cir.). The DC Cir. has also ruled that: "Under the panel's

holding, it is now the law of this circuit . . . ." See Eldred, No. 99-5430, On Petition for Rehearing.

Petitioner had filed a Motion for Remand Back to Trial Court [Summary Reversal] (henceforth "MfR ") with the DC Cir. that included very specific detailing. E.g.: Petitioner had identified how the pleading flaws within the Original Complaint ("OC") had been corrected in the Amended Complaint. Said corrections included over forty (40) case law citations in supporting, for example, how and why he was entitled to the injunctive relief requested. In ruling upon the MfR, the DC Cir. dismissed the appeal [03-5282] citing the pleading flaws of the OC , while also claiming that: ". . . appellant offered no grounds warranting such relief [Summary Reversal]." See App.2

In reaction to the Jan. 30th Panel Decision of the DC Cir. [App. 2] (henceforth "1/30 PD"), a Petition for Rehearing En Banc, dated March 8th, 2004 was filed (henceforth "PfREB "). The PfREB outlines the conflicts between the 1/30 PD and the DC Cir. itself, this Court's rulings, and panel decisions of eight (8) other circuit courts as follows:

(A) The DC Cir. granted leave to amend a Party's complaint to cure pleading flaws, and that this was "ordinarily . . . allowed" to "a plaintiff." See Totten, 286 F.3d at 546, 552,

(B) The DC Cir. ruled, concerning summary judgment, that:

> ". . . all of the allegations of material fact are taken as true and construed in the light most favorable to the non-moving party."

See Kowal, 16 F.3d at 1278. The 1/30 PD ignored all of the facts and law presented by Petitioner. E.g.: Amended Complaint with Enclosures I & II [Petition 02-1621 to this Court]; the MfR with great detailing and over forty (40) case law citations in

support; and the PfREB pleadings partially below.

(C) Three DC Cir. panels outlined four requirements that must be met to entitle a party to injunctive relief. Petitioner specifically outlined how he had met all four of said requirements within both the MfR and PfREB. See App.6 at A-23 through A-26. Both of these pleadings were ignored by the DC Cir..

(D) This Court, and six different Circuits, ruled that judicial immunity does not bar injunctive relief. See App.6 at A-22. The 1/30 PD ignored this well-established doctrine.

(E) The DC Cir. ruled that government interference with a party's employment prospects constitutes a "constitutional injury." See Taylor, No. 9505001.

(F) Petitioner's established evidence of blacklisting presented to the DC Cir. panel, and the refusal of the 10th Cir. to afford Petitioner equal protection of the laws, results in a well-founded cause of action. See Davis, 442 U.S. at 242; See also PfREB at A-18; Amend. Compl. Encl. II's App. 4 at 10.

The 1/30 PD's claim of a lack of "subject matter jurisdiction" clearly conflicts with the Davis precedent, and the evidence filed within this case.

Question 2.

The USDC Dist. of New Mexico ("USDC-NM") made a knowingly false representation to improperly exclude evidence that Petitioner had actually filed. The Court certainly observed how incriminating this evidence was. This contention is confirmed by the USDC-NM's incredibly obvious and bogus claim that said evidence was somehow "premature". See App.6 at A-19, A-20. If the claim above did not provide enough evidence of misconduct, the USDC-NM denied Petitioner of discovery ruled as

"relevant" by the Magistrate. See Id. Petitioner had outlined additional misconduct of the USDC-NM that the 10th Cir. condoned and supported at A-18.

As described above, the USDC-DC has greatly compounded the judicial misconduct that Petitioner has suffered with. E.g.: ignoring the pleadings of facts, applicable law, and case law within the MfR and the Amen. Compl. as if they were never filed. Case No. 03-1538 was not only dismissed without a legitimate explanation or basis , but with bogus knowingly false representations that have been repeated by the DC Cir.. These actions of the DC courts are an abuse of discretion and have delivered injustice to Petitioner. See Cooter & Gell, 496 U.S. 384 at 400-403; Pelican Prod. Corp., 893 F.2d 1143 at 1146; Rose, No. 98-4286, Fed. App. 0053P at Sec. III.

Question 3.

Petitioner had thoroughly demonstrated, within both the MfR and the PfREB, that he met the four requirement areas, ruled by the DC Cir., to entitle him to the injunctive relief that he was seeking. See App.6 at A-23 through A-27. What Petitioner wants vindicated is his Seventh Amendment right to a fair jury trial, so that Petitioner can then experience a restored faith in his government.

Once an entitlement to injunctive relief is established, from the nature of the case and supporting facts, there is more. A party seeking injunctive relief must also determine whether or not there are any legal barriers, particular to the case, which might apply. Petitioner has certainly demonstrated that there is a well-established doctrine in existence that does not allow judicial immunity to bar injunctive relief. *Cf.* Pulliam, 466 U.S. at 541; See also App.6 at A-22.

Prayer for Relief

Petitioner prays that this Court grant this instant Petition to resolve the conflicts, described above, between the DC Cir. itself, and all of the other circuit courts outlined.

Respectfully submitted,

s/Tod N. Rockefeller
319 Sunnyview St.
Carlsbad, NM 88220
(505) 628 - 3541

APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5282 September Term, 2003

TOD N. ROCKEFELLER, former Environmental Scientist, U.S. Dept. of Energy (DOE),
Appellant

v.

WILLIAM H. REHNQUIST, in his Official Capacity as Chief Justice of the U.S. Judicial Branch, et al.,
Appellees.

03cv01538

Filed On:
APR 9 2004

BEFORE: Ginsburg, Chief Judge, and Edwards,Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, and Roberts, Circuit Judges.

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: s/Michael C. McGrail
Deputy Clerk

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5282 September Term, 2003

TOD N. ROCKEFELLER, former Environmental Scientist, U.S. Dept. of Energy (DOE),
Appellant

v.

WILLIAM H. REHNQUIST, in his Official Capacity as Chief Justice of the U.S. Judicial Branch, et al.,
Appellees.

03cv01538

Filed On:
JAN 30, 2004

BEFORE: Ginsburg, Chief Judge, and Sentelle, and Rogers, Circuit Judges.

ORDER

Upon consideration of the motion for remand, which the court construes as a motion for summary reversal, it is

ORDERED that the motion be denied and the district court's orders filed July 30, 2003 and September 12, 2003, summarily affirmed. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court properly dismissed appellant's complaint on the grounds of lack of subject matter jurisdiction, see Marin v. Suter, 956 F.2d 294, 297 (D.C. Cir. 1992)(per curiam);

judicial immunity, see Forrester v. White, 484 U.S. 219, 225 (1988); Stump v. Sparkman, 435 U.S. 349, 356-57 (1978); and the lack of a private cause of action under 18 U.S.C. §§ 242 and 371. Even if the complaint were amended as the appellant requested in his motion for relief from judgment, the complaint would still fail for want of subject matter jurisdiction. Thus, the district court did not abuse its discretion in denying post-judgment relief because appellant offered no grounds warranting such relief.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until after seven days after the resolution of any timely petition for rehearing en banc. See Fed.R.App.P. 41(b); D.C. Cir. Rule 41.

Per Curiam

s/Ginsberg, Sentelle, and Rogers [Initials]

APPENDIX 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TOD N. ROCKEFELLER,
Plaintiff,

Doc. 6

v.

Civ. No. 03-1538

WILLIAM H. REHNQUIST, in his official capacity as Chief Justice of the U.S. Judicial Branch, et al.,
Defendants.

FILED
SEP 12, 2003

ORDER

This matter comes before the Court on plaintiff's Motion for Relief from Judg[]ment and Filing of Amended Complaint, following this Court's July 30, 2003 Memorandum Opinion and Order sua sponte dismissing this case.[1] For all of the same reasons the Court explained in its Memorandum Opinion, it is hereby this 12th day of September, 2003,

ORDERED that plaintiff's Motion for Relief from Judg[]ment and Filing of Amended Complaint is **DENIED.** **SO ORDERED.**

s/Reggie B. Walton
United States District Judge

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1. While the plaintiff asserts that "[t]he issue of judicial immunity . . . is moot because Plaintiff is no longer requesting money damages[.]" the Court's Memorandum Opinion was predicated on the fact that the Court lacked subject matter jurisdiction to review a decision of the Supreme Court and that a plaintiff is unable to bring a private cause of action predicated on the alleged violations of 18 U.S.C. §§ 242 and 371. Thus, omission of plaintiff's prayer for money damages does not alter the Court's conclusion that this matter must be dismissed.

APPENDIX 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TOD N. ROCKEFELLER,
Plaintiff,

Doc. 4

v.

Civ. No. 03-1538

WILLIAM H. REHNQUIST, in his official capacity as Chief Justice of the U.S. Judicial Branch, et al.,
Defendants.

FILED
JUL 30, 2003

ORDER

Upon consideration of the complaint, and for the reasons set forth in the Memorandum Opinion accompanying this Order, it is hereby,

ORDERED that the above-captioned case is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 30th day of July, 2003.

s/Reggie B. Walton
United States District Judge

APPENDIX 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TOD N. ROCKEFELLER,
Plaintiff,

Doc. 3

v.

Civ. No. 03-1538

WILLIAM H. REHNQUIST, in his official capacity as Chief Justice of the U.S. Judicial Branch, et al.,
Defendants.

FILED
JUL 30, 2003

MEMORANDUM OPINION

This matter was filed in this Court following the United States Supreme Court's denial of the plaintiff's Petition for Writ of Certiorari (No. 02-1621) on June 16, 2003. Rockefeller v. Abraham, No. 02-2117, 2003 WL 254879 (10th Cir. Feb. 5, 2003), cert. denied, 123 S. Ct. 2589 (2003). The plaintiff's complaint alleges that as a result of this denial of his petition, the defendants are liable for both civil and criminal violations.[1] Specifically, the plaintiff asserts that the defendants are liable for: (1) criminal violations under 18 U.S.C. §§ 242 and 371, for violation of the plaintiff's First, Fifth, and Seventh Amendment rights under the United States Constitution; (2) violations of the Civil Rights Act of 1964, 42 U.S.C. §§ 1983, 1985, 1986, and;

1. The defendants include William H. Rehnquist in his official capacity as "Chief Justice of the United States Judicial Branch," "the United States Judicial Branch," and several unknown justices of the United States Supreme Court in their official capacities.

(3) for retaliations taken against him. Complaint at 1. Upon consideration of the applicable legal principles and for the reasons set forth below, the Court must dismiss this case sua sponte because it lacks subject matter jurisdiction to review a decision of the Supreme Court and, in any event, judicial officers are entitled to absolute immunity from civil suits for judicial actions taken in their official capacity.[2] Additionally, the Court will dismiss the plaintiff's criminal claims because the applicable statutes do not permit a plaintiff to bring a private cause of action predicated on the alleged violation of the statutes.

I. Factual Background

The plaintiff, a former employee of the Department of Energy ("DOE"), was terminated by the DOE on December 10, 1997, for poor performance. Plaintiff subsequently filed two complaints in the United States District Court for the District of New Mexico, which directly or indirectly related to his termination. See Rockefeller v. Abraham, No. 02-2117, 2003 WL 254879 (10th Cir. Feb. 5, 2003) ("No. 02-2117"), cert denied, 123 S. Ct. 2589 (2003); Rockefeller v. Abraham, Nos. 01-2054 & 00-2480 (10th Cir. Nov. 15, 2003) (unpublished), cert. denied, 535 U.S. 932 (2002). In No. 02-2117, the plaintiff's case from which the instant claims arise, the Tenth Circuit affirmed the district court's ruling that the DOE was entitled to summary judgment

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2. The Court notes that the plaintiff's apparent attempt to add the entire judicial branch as a defendant in this case is futile. This is because the plaintiff fails to assert any individual claims against the judicial branch itself that would survive a motion to dismiss, as he has failed to assert any factual allegations or claims against the judicial branch, and even if he had, any such claims against the judicial branch would have to be dismissed for the same reasons the Court, as set forth below, discusses.

on: (1) the plaintiff's retaliation claim; (2) the plaintiff's claims under the whistle blower provisions of the Toxic Substances Control Act, 42 U.S.C. § 300j -9(i)(2)(A), the Safe Drinking Water Act, 15 U.S.C. § 2622(b)(1), and the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9610(b); (3) the plaintiff's claim concerning the DOE's alleged failure to process his administrative complaint in accordance with the applicable federal regulations, and; (4) the Plaintiff's claim that the DOE violated his rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution. The plaintiff then filed a Petition for Writ of Certiorari with the Supreme Court, which was subsequently denied on June 16, 2003. Rockefeller 123 S. Ct. 2589.

This case represents the fourth case filed with this Court by the plaintiff and the third one that will be dismissed, all generally involving his past employment with the DOE and the claims filed in the New Mexico district court actions. See Rockefeller v. United States Court of Appeals for the Tenth Circuit, 248 F. Supp. 2d 17 (D.D.C. 2003) (Walton, J.) (dismissed); United States ex rel. Rockefeller v. Westinghouse Electric Co., __ F. Supp. 2d __, 2003 WL 21462589 (D.D.C. June 23, 2003) (Walton, J.) (dismissed); Rockefeller v. Whitman, No. 03 Civ. 1240 (Walton, J.) (pending); Rockefeller v. Rehnquist, No. 03 Civ. 1538 (Walton, J.) (now being dismissed).

II. Legal Analysis

(A) Lack of Subject Matter Jurisdiction

As a threshold matter, a court has an "affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority." Grand Lodge of Fraternal Order of Police v. Ashcroft , 185 F. Supp. 2d 9, 13 (D.D.C. 2001); see Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94

(1998); Pitney Bowes, Inc. v. United States Postal Service, 27 F. Supp. 2d 15, 19 (D.D.C. 1998). Federal Rule of Civil Procedure 12(b)(1) requires that the plaintiff bear the burden of establishing by a preponderance of the evidence that the court has jurisdiction to entertain his claims. Fed.R.Civ.P. 12(b)(1); Grand Lodge of Fraternal Order of Police, 185 F. Supp. 2d at 13; Pitney Bowes, 27 F. Supp. 2d at 19. While the Court must accept as true all the factual allegations contained in the complaint when deciding whether to dismiss a case pursuant to Rule 12(b)(1), Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 164 (1993), because the plaintiff has the burden of proof to establish jurisdiction, the "'plaintiff's factual allegations in the complaint . . .will bear closer scrutiny in resolving a 12(b)(1) motion' than in resolving a 12(b)(6) motion for failure to state a claim[,]" Grand Lodge of Fraternal Order of Police, 185 F. Supp. 2d at 13-14 (citation omitted). Therefore, in deciding whether to dismiss a complaint under 12(b)(1), the Court is not limited to the allegations in the complaint but may consider "'such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction in the case.'" Id at 14 (citations omitted).

The plaintiff asks this Court to review the Supreme Court's denial of the plaintiff's Petition for Writ of Certiorari. However. "[i]t seems axiomatic that a lower court may not order the judges or officers of a higher court to take action." Panko v. Rodak, 606 F.2d 168, 171 (7th Cir. 1979), cert. denied, 444 U.S. 1081 (1980). Accordingly, this Court finds that it lacks subject matter jurisdiction to review the Supreme Court's denial of the plaintiff's Petition for Writ of Certiorari. See Marin v. Suter, 956 F.2d 339, 340 (D.C. Cir. 1992), cert.

denied, 506 U.S. 844 (1992); see also Tilli v. Rehnquist, No. 02 Civ. 2108 (D.D.C. Nov. 19, 2002), aff'd, No. 02-5359 (unpublished) (D.C. Cir. Apr. 2, 2003).

1. The Defendants are Protected By Absolute Immunity

Even if the Court could exercise jurisdiction over the plaintiff's civil claims, dismissal would still be required because the defendants are being sued for official actions they performed as judicial officers and are therefore entitled to absolute immunity as to those claims. As the Supreme Court stated in Forrester v. White, 484 U.S. 219 (1988) (citation omitted), "[i]f judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudications." Id at 226-227.

In Forrester, the Supreme Court characterized "paradigmatic judicial acts" to be those "involved in resolving disputes between parties who have invoked the jurisdiction of a court[.]" 484 U.S. at 227. It is clear that the adjudication of claims by the judicial branch of the United States government, as well as the denial of a writ of certiorari by the Supreme Court, constitute "paradigmatic judicial acts" that are intimately "involved in resolving disputes between parties who have invoked the jurisdiction of a court." Id. Consequently, the plaintiff is precluded from asserting claims against the district court judge, circuit court judges and Supreme Court justices for their actions taken during the course of adjudicating the plaintiff's claims. The district court and circuit court

judges[3] were all acting within their judicial capacities when they ruled or affirmed the rulings which dismissed the plaintiff's claims. Similarly, the Supreme Court justices were all clearly acting within their judicial capacities when they decided to deny the plaintiff's Petition for Writ of Certiorari. These actions were all part of the adjudicative process initiated by the plaintiff, and therefore are well within the scope of what constitutes "judicial acts" as defined by Forrester. Id. Furthermore, the plaintiff does not suggest that any of the defendants lacked jurisdiction when they performed the acts being challenged by the plaintiff in the instant lawsuit. See 28 U.S.C. § 1331 (stating that a federal district court "shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."; 28U.S.C. § 1291 (stating that the courts of appeals "shall have jurisdiction of appeals from all final decisions of the district courts of the United States"); 28U.S.C. § 1254 ("[c]ases in the courts of appeals may be reviewed by the Supreme Court . . . [b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . . ."). Thus, even if this Court

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3. While the plaintiff does not directly name in his complaint any of the judges of the Tenth Circuit who affirmed the district court's decision which granted the DOE's motion for summary judgment in his case from which the claims in this case arise, even if such a claim could be construed from the complaint, dismissal would still be required for all the reasons expressed by this Court in Rockefeller v. United States Court of Appeals for the Tenth Circuit, 248 F. Supp. 2d 17. Moreover, the plaintiff would be barred from re-litigating these claims on res judicata grounds. Nevada v. United States, 463 U.S. 110, 1130115 (1983) (holding that the United States could not re-litigate the claims filed in the district court when a final decree had been previously awarded by the same district court on those same claims).

could entertain the plaintiff's civil claims, they could not be maintained because the defendants are clearly entitled to absolute immunity.

2. The Plaintiff's Claims Pursuant to 18 U.S.C. §§ 242 and 371

As this Court explained in Rockefeller v. United States Court of Appeals for the Tenth Circuit, 248 F. Supp. 2d 17, the plaintiff is precluded from asserting any claims pursuant to 18 U.S.C. §§ 242 and 371 because these are criminal statutes that do not permit the plaintiff to bring a private cause of action. See Dugar v. Coughlin, 613 F. Supp. 849, 852 n.1 (S.D.N.Y. 1985) (holding that an individual could not bring a private cause of action under 18 U.S.C. §§ 242 and 371 because the statutes did not confer a private right of action); see also Powell v. Kopman, 511 F. Supp. 700, 704 (S.D.N.Y. 1981) (holding that 18 U.S.C. § 242 does not create a private right of action); Fiorino v. Turner, 476 F. Supp. 962, 963 (D. Mass. 1979) (failing to locate any authority which would support a private cause of action under 18 U.S.C. §§ 242 and 371). Accordingly, the Court must dismiss the plaintiff's claims regarding the defendants' alleged violations of 18 U.S.C. §§ 242 and 371.

III. Conclusion

This court's Circuit Court of Appeals has previously affirmed a district court's sua sponte dismissal of a complaint when the district court had found further adjudication of a plaintiff's claims would be futile and a waste of judicial resources. In Luftig v. McNamara, 373 F.2d 664 (D.C. Cir. 1967), the DC Cir. affirmed a district court's sua sponte dismissal of a complaint when it was clear that the plaintiff's allegation constituted a political question beyond the court's jurisdiction. Id at 665-66. Similarly, the DC Cir. recently

affirmed a sua sponte dismissal by this Court of a complaint seeking both damages from the five justices of the United States Supreme Court who were in the majority in Bush v. Gore, 531 U.S. 98 (2000), and an order demanding a new presidential election, finding that the Court lacked subject matter jurisdiction to review such claims. Tilli v. Rehnquist, No. 02 Civ. 2108 (D.D.C. Apr. 2, 2003), aff'd, No. 02 Civ. 2108 (D.C. Cir. July 2, 2003). Accordingly, this Court will sua sponte dismiss the plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(1) because this Court lacks subject matter jurisdiction to review the decision of the Supreme Court denying the plaintiff's Petition for Writ of Certiorari, because even if the Court could exercise jurisdiction over the judicial officers named in his complaint the claims would have to be dismissed on absolute immunity grounds, and because the plaintiff is unable to bring a private cause of action under 18 U.S.C. §§ 242 and 371.[4]

SO ORDERED this 30th day of July, 2003.

s/Reggie B. Walton
United States District Court Judge

4. An Order consistent with the Court's ruling accompanies this Memorandum Opinion.

APPENDIX 6

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

TOD N. ROCKEFELLER, former Environmental Scientist, United States Dept. of Energy (DOE), Plaintiff / Appellant	Case No. 03 - 5282
v.	USDC No. 03 - 1538
WILLIAM H. REHNQUIST in his Official Capacity as Chief Justice of the U.S. Judicial Branch; 10th Cir. Judges Briscoe, Henry, Murphy, and Judge Parker of the USDC Dist. of NM, in their Official Capacities, Defendants / Appellees.	10th Cir. No. 02 - 2117
	USDC - NM No. 01 - 0399

Petition for Rehearing by the Panel and Petition for Rehearing En Banc

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I. Introduction

Appeal No. 03-5282 was dismissed by this Court with an Order filed on 1/30/04, for a claimed lack of subject matter jurisdiction, and two other claims. This Court's 1/30/04 Panel Decision (henceforth "1/30 PD") will be shown to conflict with seventeen (17) decisions of the Supreme Court (henceforth "Sup.Ct."), and eleven (11) panel decisions of eight (8) different United States ("U.S.") Circuit Courts of Appeals. Petitioner-Appellant is filing a combined pleading as captioned above. See DC Cir. HdBk at 57

Plant ("WIPP"), which is a repository for defen Petitioner was a Physical Scientist [GS 1301-13] at the U.S. Department of Energy's ("DOE's") Waste Isolation Pilot se program generated trans- uranic nuclear waste. Petitioner is simply just an honest scientist who was trying to take measures at the WIPP Project to accomplish its mission in a cost-effective and safe manner. The DOE has engaged in post-employment retaliations towards Appellant. In response to his being blacklisted by his former employer, as captioned above, Petitioner filed complaints in the USDC, appeals in the Tenth Circuit, (as captioned above) and then a Petition for Writ of Certiorari in the Sup.Ct., No. 02-1621 (henceforth "Petition 02-1621").

After exhausting all of his avenues of administrative relief [Petition 02-1621], Petitioner filed Complaint No. 03-1538 RBW in the DC district court. The DC district court sua sponte dismissed said Complaint with an Order filed on 7/30/03. In response, Appellant had filed a Motion for Relief from Judgment and Filing of Amended Complaint (doc. 5 with Attach. No. 1). The Amended Complaint corrected pleading flaws and requests Injunctive relief only. This is what Appellant can appropriately request from this Court in an Official-capacity suit. The 1/30 PD in question is attached as "Addendum I".

II. Appellant's Amended Complaint

Appellant filed, on 8/28/03, his Amended Complaint (doc. 5's Attach. No. 1) in accordance with the requirements of Fed.R.Civ.P. 15(a). The district court's Memorandum and Opinion (doc. 3) associated with the 7/30/03 Order (doc. 4) had alerted Appellant to several pleading flaws within his Original Complaint (doc. 1). E.g.: (1) challenging a decision of the Sup.Ct.; (2) demand of

damages in dollars; and (3) a cause of action under 18 U.S.C. §§ 242 and 371.

Within said Amended Complaint, Appellant had cured the three pleading flaws listed above. As had been quoted by Appellant within doc. 5 at 2, Rule 15(a) requires that:

> "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, . . . , the party may so amend it at any time within 20 days after it is served."

Appellant had met both of the requirements of Rule 15(a) above in the filing of the Amended Complaint (doc. 5's Attach. No. 1). E.g.: (1) it was the first amendment of the Original Complaint (doc. 1) and no "responsive pleading" had been "served"; and (2) the complaint had not yet been "served".

A panel of this Court had granted leave to amend a Party's complaint to cure pleading flaws in agreement with the district court that noted that this kind of an opportunity is "ordinarily . . . allowed" to "a plaintiff." See United States ex rel. Totten v. Bombardier Corp., et al, 286 F.3d 542, 546, 552 (DC Cir. 2002). As described above, Appellant filed said Amended Complaint, while satisfying Rule 15(a)'s requirements, to correct the pleading flaws within the Original Complaint.

It is axiomatic that when an amended complaint is properly filed by a plaintiff, only that amended complaint and its contents are before the court. The court can not then backtrack and consider what was included within the Original Complaint (emphasis added). To do this is very plain and harmful error, which is what the district court (doc. 6) and this Court have done (the1/30 PD). The 1/30 PD of this Court conflicts with the Totten panel above, and is also an abuse of discretion. The Sup.Ct. has ruled that: "A district court, by

definition, abuses its discretion when it makes an error of law." See Koon v. United States, 518 U.S. 81, 100 (1996).

III. The District Court's Memorandum and Opinion [doc. 3]

The district court had dismissed Appellant's Original Complaint [03-1538] claiming that it "lacks subject matter jurisdiction to review the Supreme Court's denial of the plaintiff's Petition for Writ of Certiorari." doc. 3 at 4 The district court had also subsequently dismissed the Amended Complaint (doc. 5's Attach No. 1) with an Order (doc. 6) noting the same claim of a lack of subject matter jurisdiction despite the fact that the Amended Complaint corrected the pleading flaws as detailed above. As Appellant had clearly pointed out to this Court:

> "The Amended Complaint challenges the actions of the 10th Cir. and NM district court, which includes due process violations and abuses of discretion as will be demonstrated below. Appellant had to file a Petition for Writ of Certiorari, No. 02-1621, with the Sup.Ct. to challenge the rulings of the NM district court and the 10th Cir.. If Appellant had failed to file said Petition, the DC district court Complaint [03-1538 RBW] would have been dismissed on the grounds that Appellant had failed to exhaust his administrative remedies.

See doc. 5 at 2. The Order (doc. 6) of the district court and the 1/30 PD of this Court conflicts with a number of Sup.Ct. decisions and panel decisions of the DC Cir., 1st Cir., 2nd Cir., 5th Cir., 6th Cir., 7th Cir., 9th Cir., and 10th Cir. as will be demonstrated below.

The 10th Cir. Appellees had clearly admitted-by-silence, as a result of the proceeding of Petition 02-1621 [with which they had been properly served] , to have violated the following rights of Appellant:

a. Pleadings filed were ignored;
b. Relevant admissible evidence filed was excluded;
c. No discovery of "relevant" evidence ruled by the Magistrate was allowed;
d. The doctrine of stare decisis was defied without a hint of justification for doing so;
e. Enforcement of applicable law that was clearly outlined and violated was refused.

See Motion for Remand Back to Trial Court at 4 (henceforth "Motion"); See also doc. 5 at 5. It was clearly identified to both the district court and this Court, as noted above, that Appellees had refused to afford Appellant equal protection of the laws. Appellant's due process rights have also been violated by the improper exclusion of evidence filed and suppression of "relevant" evidence ruled by the Magistrate. See Id. The Sup.Ct. has ruled that the Federal Government is forbidden to deny equal protection of the laws. See Davis v. Passman, 442 U.S. 228, 234 (1979).

This Court's 1/30 PD conflicts with the ruling in Davis by refusing to afford Appellant equal protection of the laws. In addition, the Davis case outlines that:

> ". . . a cause of action may be implied directly under the equal protection component of the Due Process Clause of the Fifth Amendment . . ."

See 442 U.S. at 242. This Court's 1/30 PD claims that:

> "Even if the complaint were amended . . ., the complaint would still fail for want of

subject matter jurisdiction." Also that:

> ". . . appellant offered no grounds warranting such relief."

These claims within the 1/30 PD are plain and harmful error as detailed above and below.

It seems apparent that the panel of this Court that made the 1/30 PD did not examine the contents of Appellant's Motion. Said Motion thoroughly outlined admitted and established facts of violations listed above along with forty (40) case law citations in support. Again, Appellant had outlined established facts going far beyond only specifying genuine issues of material fact in dispute, which would require that the case go to trial. See Matsushita Electric Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986); See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986); Associated Press v. United States, 326 U.S. 1, 6 (1945); Lytle v. Household Mfg., Inc., 494 U.S. 545, 554 (1990); and Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 624 (1944). The 1/30 PD clearly conflicts with all of the Sup.Ct. decisions above.

Appellant's Amended Complaint and Motion both specifically detail that relevant evidence was improperly excluded by Appellees. For example:

> "The district court denied the attempt of Petitioner to file and establish relevant and probative evidence into the record of this case to defend against summary judgment. Said evidence was categorized by the district court as "premature", and Defendant claimed that this [incriminating] evidence would be "cluttering the record." See App. 4 [Amended Complaint's Encl. II] at 14, 15. Fed.R.Evid. 201(f) notes that:

> "Judicial notice [of adjudicative facts] may be taken at any stage of the proceeding."
>
> Classification of the adjudicative facts that Petitioner had attempted to introduce as "premature" by the district court was without any doubt an error of law."

See Amended Complaint's Encl. I at 2, 3. The Sup.Ct. has ruled that the:

> ". . . proposition that the Due Process Clause guarantees the right to introduce all relevant evidence is indefensible. See, e.g., Taylor v. Illinois, 484 U.S. 400, 410; Fed. Rule Evid. 403; Fed. Rule Evid. 802."

See Montana v. Egelhoff, 518 U.S. 37 (1996). Appellees' refusal to admit this evidence "was a clear abuse of discretion." See Beech Aircraft Corp. v. Rainey, 488 U.S. 153, 172 (1988). The1/30 PD conflicts with the Sup.Ct. rulings in Montana and Beech Aircraft above.

Appellees have improperly suppressed "relevant" evidence ruled by the Magistrate. Appellant had specifically detailed this admitted suppression of relevant evidence to this Court and the district court. See Motion at 5; See also Amended Complaint's Encl. I at 4. Appellees abused their discretion by dismissing Appellant's 10th Cir. appeal [02-2117] while "facts essential" to his opposition to summary judgment had been withheld. See Fed.R.Civ.P. 56(f). The Sup.Ct. has noted that Rule 56(f):

> "allows a summary judgment motion to be denied, . . . , if the nonmoving party has not had an opportunity to make full discovery."

See Celotex Corp. v. Catrett, 477 U.S. 317, 326 (1986). The Sup.Ct. has also ruled that:

". . . the suppression . . . of evidence favorable to [a party such as Appellant] . . . violates due process where the evidence is material . . ."

See Brady v. Maryland, 373 U.S. 83, 87 (1963). The 1/30 PD dismissing this instant appeal [03-5282] conflicts with the Sup.Ct. decisions within Celotex and Brady above.

In contrast to the claim, within the 1/30 PD, that: "Appellant offered no grounds warranting such relief [summary reversal];" Appellant has very specifically outlined the elaborate, detailed, and well-founded "grounds warranting such relief" above. A panel of this Court has ruled, concerning the dismissal of a complaint, that:

". . . all the allegations of material fact are taken as true and construed in the light most favorable to the non-moving party . . ."

See Kowal v. MCI Communications Corp., 16 F.3d 1271, 1278 (DC Cir. 1994); See also Anderson, 477 U.S. at 255; Lytle, 494 U.S. at 554. The 1/30 PD has not acknowledged the established and admitted facts of Appellant above which go far beyond mere "allegations." Therefore, the 1/30 PD conflicts with the Kowal panel and the Sup.Ct. rulings in Anderson and Lytle.

As detailed above, the 1/30 PD's listing of issues such as "judicial immunity", and "the lack of a private cause of action under 18 U.S.C. §§ 242 and 371," are plain error to backtrack to the Original Complaint's [03-1538] pleading flaws that were corrected. The Amended Complaint contains NO such issues that "are so clear as to warrant summary action." See Id In addition, absolutely no legitimate explanation is given, within the 1/30 PD, for denial of Appellant's Motion, especially considering the elaborate, detailed, and well-founded grounds for relief within such Motion

outlined above. This clearly erroneous and manifest error in judgment conflicts with the following Circuit panel decisions and decisions of the Sup.Ct. See Rose v. Hartford Underwriters Insur. Co., No. 98-4286, Fed. App. 0053P, Sec. III (6th Cir. 2000); Pelican Production Corp. v. Marino, et al, 893 F.2d 1143, 1146 (10th Cir. 1990); Webb v. A.B.F. Freight, No. 96-1427, Sec. II.B. (10th Cir. Sept. 4, 1998); and Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 400-03, 405 (1990).

Finally, the 1/30 PD conflicts with four (4) Sup.Ct. decisions, and panel decisions from six (6) different U.S. Circuit Courts that judicial immunity does NOT bar injunctive relief. Appellant's Amended Complaint was before this Court, not the Original Complaint with the pleading flaws. The Amended Complaint was seeking only injunctive relief and no damages. Appellant had outlined the following cases to support his position:

a. Pulliam v. Allen, 466 U.S. 522, 528, 537, 541 (1984);
b. Forrester v. White, 484 U.S. 219, 228-29 (1988);
c. Hewitt v. Helms, 482 U.S. 755, 766 (1987);
d. Mireles v. Waco, 502 U.S. 9, 10 n.1 (1991);
e. In re Justices of Supreme Court of Puerto Rico, 696 F.2d 17 (1st Cir. 1982);
f. Heimbach v. Lyons, 597 F.2d 344 (2nd Cir. 1979);
g. Slavin v. Curry, 574 F.2d 1256 (5th Cir. 1978);
h. WXYZ, Inc. v. Hand, 658 F.2d 420 (6th Cir. 1981);
i. Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979);
j. Richardson v. Koshiba, 693 F.2d 911 (9th Cir. 1982).

The 1/30 PD conflicts with all of the Sup.Ct. and panel decisions above by not allowing injunctive relief. Judicial immunity does not bar such relief that is warranted by the well-founded grounds above.

IV. Entitlement to Injunctive Relief

Panels of this Court have ruled that there are four requirements that must be satisfied for a litigant to be entitled to a grant of injunctive relief. These requirements are:

> "(1) that he is substantially likely to succeed on the merits of the suit, (2) that in the absence of an injunction, he would suffer irreparable harm for which there is no adequate legal remedy, (3) that the injunction would not substantially harm other parties, and (4) that the injunction would not significantly harm the public interest."

See Wagner v. Taylor, 836 F.2d 566, 576 (D.C. Cir. 1987); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); see also Tenacre Foundation v. INS, No. 95-5294 (D.C. Cir., March 19th, 1996). Concerning injunctive relief, the Sup.Ct. has stated the following:

> "Under the Court of Appeals' remand order, the District Court could, and probably should, have entered judgment granting the requested declaratory and injunctive relief. Instead, the District Court first took up the question of immunity, and, upon finding qualified immunity, precipitately issued an order closing the case. No order was entered disposing of respondent's pending claims for equitable relief."

See Hewitt v. Helms, 482 U.S. 755, 766-67 (1987) (Marshall, J., dissenting). Concerning Appeal No.

03-5282 with this Court, the same is true as quoted from the Hewitt case above. After this Court found Defendants immune, an order was filed on 1/30/04 "closing the case", without "disposing" of Petitioner's "pending claims for equitable relief " [remand back to Trial Court as injunctive relief while allowing no damages].

In addition, Appeal No. 03-5282's claim for equitable relief was ripe for a judicial decision. A panel of this Court ruled the following:

> "The two-pronged test for ripeness established by the Supreme Court in Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49 (1967), requires the court to consider both the "fitness" of the issues for judicial decision and the "hard ship" to the parties of withholding review. "Purely legal questions," such as those presented in the instant case, are "presumptively [fit] for judicial review." City of Houston v. HUD, 24 F.3d 1421, 1431 (D.C. Cir. 1994)(quoting Better Gov't Ass'n v. Department of State, 780 F.2d 86, 92 (D.C. Cir. 1986)."

See Chamber of Commerce of the U.S., et al. v. Reich, No. 95-5135 (D.C. Cir., June 21st, 1995). As will be demonstrated below, Petitioner's Appeal [03-5282] met the four "requirements" that panels of this Court have ruled which entitled him to injunctive relief, and that Petitioner's pending claims for equitable relief were indeed ripe for a judicial decision.

a. Meritorious Claims of Petitioner - as described above, Petitioner had filed Petition No. 02-1621 with the Sup.Ct.. Within said Petition, it is specifically outlined how facts concerning the DOE's blacklisting of Petitioner support his claims. The DOE had remained silent concerning the allegations within Petition 02-1621 and had

admitted to them by the well-established doctrine of admission-by-silence. The 9th Cir. has ruled that:

> "The general rule concerning admissions by silence or acquiescence is well established. When an accusatory statement is made in the defendant's presence and hearing, and he understands and has the opportunity to deny it, the statement and his failure to deny are admissible against him."

See United States v. Moore, 522 F.2d 1068, 1075 (9th Cir. 1975).

Appellees had also violated the due process rights of Petitioner by affirming the district court's improper exclusion of near 300 pages of relevant admissible evidence that had been filed. Petitioner most certainly was likely to succeed on the merits of his 10th Cir. Appeal [02-2117]. Petitioner has indeed suffered from due process violations of Appellees.

b. In the Absence of an Injunction - if this remains so, Petitioner will suffer irreparable harm. Petitioner's career has been killed by the DOE. Employment was sought by Petitioner with numerous employers which did not result even with just being interviewed. All of Petitioner's employment applications had been denied. In addition, the DOE has admitted to blacklisting Petitioner at the Carlsbad Environmental Monitoring and Research Center ("CEMRC "). Petitioner had applied for a position at CEMRC [a facility that is partially funded by the DOE]. As noted above, Petitioner did not even get an interview with CEMRC despite his directly related graduate degree and years of very relevant experience. E.g.: Petitioner was an Atmospheric Research Scientist at the DOE's Environmental

Measurements Laboratory ("EML") in New York City. At EML, Petitioner had been working on the characterization of air masses to aid in the ability to predict global climate change. Rather than hire Petitioner, CEMRC hired a Mr. Jeremy Staley who had NO college degree or relevant experience (emphasis added). This was specifically outlined within Petition 02-1621 at 7, 8. The DOE has admitted-by-silence to the blacklisting of Petitioner. Petitioner had worked very hard at develop ing a career with quite a few years of taking his college classes at night, while working full-time during the day to pay for his education himself. All of the career aspirations of Petitioner have been destroyed by the DOE. Petitioner was never a poor performer as the DOE has now admitted to. Petitioner has no training in regard to the law, yet he has successfully docketed four petitions with the Sup.Ct.. This fact alone would very likely prevent any jury from finding that Petitioner had ever been a poor performer [the claim the DOE used to remove Petitioner from federal service]. Petitioner never had any desire to be criticizing the Government and battling the DOE in court. A humble prayer is made by Petitioner for this Court to show him justice done.

c. An Injunction's Harm to Defendants or the Public - if this Court grants this instant Petition, and then subsequently grants the injunctive relief that is sought noted above [remand back to Trial Court], no harm will come to the 10th Cir. Defendants. No damages can be sought towards the Defendants as outlined above. All Petitioner wants to have vindicated is his Seventh Amendment right to a fair jury trial towards the DOE. Injunctive relief as such would certainly be of no harm to the public, but would actually be of value by affirming the strength of the Bill of Rights.

V. Conclusion

This Court's 1/30/04 Order dismissing Appeal No. 03-5282 details three justifications. Petitioner has demonstrated, within this instant Petition, that there are well-founded justifications for granting him the injunctive relief that he seeks [the three issues within the 1/30 PD have been fully addressed]. In additional support, the Sup.Ct. has ruled that:

> "Indeed, this Court has already settled that a cause of action may be implied directly under the equal protection component of the Due Process Clause of the Fifth Amendment in favor of those who seek to enforce this constitutional right.

See Davis, 442 U.S. at 242. Petitioner prays that this Court "enforce this constitutional right". Id

Prayer for Relief

Petitioner prays that this Court issues an order granting this instant Petition for the justifications outlined above. Such an order would be a very large step towards vindicating Petitioner's constitutional rights and restoring faith in his government.

Respectfully submitted,
s/Tod N. Rockefeller, pro se
319 Sunnyview St.
Carlsbad, NM 88220
(505) 628 - 3541

Dated & Served: March 8th, 2004